Supreme Court, U.S.
FILED

No. 98-1483 MAR 15 1999

OFFICE OF THE CLERK

In The

# Supreme Court of the United States

October Term 1998

**PATRICK J. MANNIX, SR.,**

*Petitioner,*

v.

**COMMONWEALTH OF VIRGINIA,**

*Respondent.*

**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA**

## Petition for Writ of Certiorari

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28PP

## QUESTION PRESENTED

1. Is the decision of the Supreme Court of Virginia in affirming the decision of the Court of Appeals of Virginia that prohibits Patrick J. Mannix, Sr. from issuing summons and/or subpoena duces tecum without prior Court approval in any future proceedings before the Circuit Court and General District Court of Washington County, Virginia, in direct violation of the Sixth Amendment to the United States Constitution?

## PARTIES TO THE PROCEEDINGS

Petitioner, Patrick J. Mannix, Sr., is a resident of Washington County, Virginia. He was the Defendant in a criminal case in the Circuit Court of Washington County that was ultimately appealed to the Supreme Court of Virginia, the State's highest Court. The Commonwealth of Virginia is the Respondent.

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## PETITION FOR WRIT OF CERTIORARI

Patrick J. Mannix, Sr. respectfully petitions the United State Supreme Court to issue a Writ of Certiorari to review the judgment entered in this action by the Supreme Court of Virginia.

## OPINIONS BELOW

The opinion of the Supreme Court of Virginia giving rise to this action dismissed the appellant's petition for appeal on the finding that the decision of the Court of Appeals did not involve a substantial constitutional question as a determinative issue.

## JURISDICTION

The decision of the Supreme Court of Virginia was entered on December 15, 1998. The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. §1257(a).

## STATEMENT OF THE CASE

### I. FACTUAL BACKGROUND

Patrick J. Mannix, Sr. ("Mannix") was a Democratic candidate for Supervisor in Washington County, Virginia. Mannix was charged on May 23, 1997, for the offense of trespassing at the law office of Mark Graham ("Graham"), the Democratic party chairman.

Graham as Democratic party chairman conducted political business at his law office and designated his law office address as the address of the Democratic Party Chairman. Graham had a warrant issued for Mannix for trespassing on May 23, 1997, at his law office.

Mannix contended that he was at the law office of Graham for the purpose of conducting political business in his campaign as a Democratic candidate for Supervisor.

## II. PROCEDURAL SUMMARY

The General District Court of Washington County, Virginia, found Mannix guilty of the offense of trespassing at the law office of Graham. Mannix appealed the case to the Circuit Court of Washington County, Virginia.

Mannix was found guilty by a jury in the Circuit Court of Washington County, Virginia, on December 3, 1997. (App. 7) Mannix filed a written Motion to set the verdict aside. The Circuit Court by Final Order entered on January 5, 1998, (App. 10-12) overruled Mannix's Motion to set aside the verdict and pronounced sentence in accordance with the verdict of the jury.

The Circuit Court also provided in the January 5, 1998 Order (App. 10-12) that Mannix could not issue or caused to be issued summons and/or subpoena duces tecums in any future proceedings before the Washington County Circuit

Court and the Washington County General District Court without first having obtained permission from a Judge of the respective Court to do the same.

The propriety of the Court entering the Order on January 5, 1998, (App. 10-12) prohibiting Mannix from issuing a summons and/or subpoena duces tecum in any future proceedings before the Washington County Circuit Court and the Washington County General District Court was addressed before the Court of Appeals (App. 13) and the Supreme Court of Virginia (App. 14) with both Courts ruling adversely to Mannix on this issue.

## REASONS FOR GRANTING THE WRIT

I. The decision of the Supreme Court of Virginia in dismissing Mannix's appeal of the Order of the Circuit Court of Washington County, Virginia, prohibiting Mannix from issuing summons and/or subpoena duces tecums without prior Court approval in any future proceedings before the Circuit Court and the General District Court is in direct violation of the Sixth Amendment to the United States Constitution.

The Sixth Amendment to the United States Constitution states in part as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the state and district wherein the crime shall have been committed,..., and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; *to have compulsory process for obtaining witnesses in his favor,* and to have the assistance of counsel for his defense.

Article 1, Section 8 of the Constitution of Virginia, likewise provides:

> *that in criminal prosecutions, a man hath a right to demand the cause and nature of his accusations, to be confronted with the accusers and witnesses, and* **to call for evidence in his favor**, *and he shall enjoy the right to a speedy and public trial, by an impartial jury...*

In Moreno v. Commonwealth, 10 Va. App. 408, 392 S.E. 2d 836 (1990), the Court held that a defendant's constitutional due process right to a fair trial includes the right to call for evidence in his favor. If the rule were otherwise, the prohibition announced in Cox v. Commonwealth, 227 Va. 324 at 328, 315 S.E. 2d 228, at 230 (1984) would be violated wherein the Court stated that in our adversary system of criminal justice, all relevant facts must be available to both the prosecution and the defense in order to preserve the system's integrity. To insure that justice is done, it is imperative to the function of Courts that *compulsory process* be available for the production of evidence needed either by the prosecution or by the defense.

The Trial Judge's ruling concerning the prohibition against Mannix to obtain summons and subpoena duces tecum is in direct contradiction of

the law as established by our Constitution and cited case authorities. Cox made it very clear that the right to call for evidence in the favor of the accused applies with equal force to the procurement of documentary evidence. Id. at p. 328.

An accused has a constitutional right to call for evidence in his favor which includes the right to prepare for trial by procuring both testimonial and documentary evidence. A Court cannot exercise this discretion in such a manner as to deny an accused a fair and impartial trial or deprive him of his constitutional right to call for evidence in his favor. Gilchrist v. Commonwealth, 247 Va. 540, 317 S.E. 2d 784 (1984); Lomax v. Commonwealth, 228 Va. 168, 319 S.E. 2d 763 (1984). In United States v. Seeger, 180 F. Supp, 467, (1960), the Defendant served a subpoena upon the Chairman of the House Committee on Un-American Activities commanding the latter's appearance as a defense witness. The government moved to quash the subpoena on the grounds that all matters were deducible from documents, records and minutes of Committee proceedings and thus, no need existed to have the oral testimony of the Chairman of the Committee. The Court refused to quash the subpoena and ruled that the witness had to appear.

The Court held as follows:

> *"Under the Sixth Amendment to the Constitution a defendant accused of crime is guaranteed the right to compel the attendance of witnesses. Who these witnesses shall be is a matter for the Defendant and his counsel to decide. . . . The materiality of a witness' proffered testimony must rest with the trial judge after the witness has been sworn."*

The Court held that to issue such a ruling in advance of trial and to hold that the witness' testimony is not material would deprive the Defendant of his constitutional right to compulsory process under the Sixth Amendment and his right to a fair trial under the due process clause of the Fifth Amendment. The Court was of the opinion that the materiality of a witness' proffered testimony must rest with the Trial Judge after the witness has been sworn. Id. 468.

The Trial Judge's Order prohibiting Mannix from obtaining evidence in the future without first obtaining permission of the Court certainly has a very chilling effect upon Mannix or any attorney who would be representing him. Any attorney would certainly be very cautious as to what would be revealed to a Judge for fear of violating the attorney-client privilege. The Sixth Amendment to

the United States Constitution and Article 1, Section 8, of the Virginia Constitution do not contain such prohibitive and restrictive language.

## CONCLUSION

In view of the foregoing, Patrick J. Mannix, Sr., respectfully requests the Court to grant the Petitioner's Writ of Certiorari.

Respectfully submitted this 15th day of March, 1999.


Emmitt F. Yeary

EMMITT F. YEARY
Counsel for Patrick J. Mannix, Sr.
Counsel of Record
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(540) 628-3529

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SUMMONS

Washington General District

☒ General District Court

East Main & Court Streets Abington, VA 24210
STREET ADDRESS OF COURT

TO THE ACCUSED:

Your are hereby commanded to appear before this Court on

07/16/96 09:00AM
DATE AND TIME
OF HEARING

to answer the charge that on or about

05/23/98
DATE

ENTERED: July 16, 1997

you did unlawfully without authority trespass or remain upon the property of law office of Mark Graham after haven been forbidden to do so in violation of Section 18.2-119 ☒ Code of Virginia.

You must appear in court at this time and place shown above and to appear at all other times and places and before any judge to which this case may be rescheduled, continued, transferred or appealed.

WARNING TO THE ACCUSED: You may be tried and convicted in your absence if you fail to appear in response to this summons. Willful failure to appear is a separate offense.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charge, based on the sworn statements of Mark Graham

\S_____ Complainant
Mark Graham

05/23/96 10:36AM
DATE AND TIME
ISSUED

\S_____
Edward L. VanHoy
Magistrate

CASE NO.
C97 004107

ACCUSED:

Mannix, Patrick J. Sr.
LAST NAME, FIRST NAME, MIDDLE NAME

23404 Ivy Road
ADDRESS/LOCATION

Bristol, Va

RACE SEX
W M

☒ Commonwealth of Virginia

SUMMONS

CLASS 1 MISDEMEANOR

☒ EXECUTED by delivering a true copy of this summons to the Accused in person today.

5-23-97 10:45
DATE AND TIME OF SERVICE

\S_____, SERVING OFFICER

#403 095
BADGE NO., AGENCY AND JURISDICTION

for \S_____
SHERIFF

Attorney for the Accused:

HEARING DATE
AND TIME

07-16-97 ~~09:00AM~~
2:30 PM

NOTICE

YOU ARE HEREBY COMMANDED TO APPEAR FOR ARRAIGNMENT AND/OR APPOINTMENT OF COUNSEL AT 9:00 AM ON 7-9-97

191GC WAR/SUM #
WH0113181

The Accused was this day

☒ present

Attorneys Present:

Bolt
PROSECUTING ATTORNEY (NAME)

☒ ATTORNEY WAIVED

The Accused PLEADED:

☒ not guilty

Although accused had caused to be issued summons and subpoenas duces tecum for numerous witnesses and documents, he informed the court that he would not "put on" a defense in this case.

And was TRIED and FOUND by me:

☒ guilty as charged

☒ ORDER

Accused is permitted to tape record this proceeding upon the condition that if recording of such proceeding is recording in a subsequent year ending the accused will cause same to be transcribed and will submit such transcription to the judge in this case for approval.

☒ ORDER

Defendant shall not go upon the property of properties of the offices of Mark R. Graham, attorney, and the offices of Mark R. Graham, Chairman Washington County Democratic Committee as a condition of suspended fine. suspended jail sentence and disposition of this case

☒ I impose the following sentence:
Fine of $350.00 with 300 suspended

Jail Sentence of Thirty Days Imposed

with Thirty days suspended conditioned upon being of good behavior and keeping the peace for one year and upon payment of $350.00 fine and costs.

Appeal noted.
Appeal bond $500.00 cash as received

07/16/99 \S_____
JUDGE

Sanctions pursuant to § 8.01 - 271.1 of the Code of Virginia, 1950, as amended, imposed. 07/16/97

\S_____
JUDGE

FINE
$50.00

COSTS

| | | |
|---|---|---|
| 112 | }PROCESSING FEE{ | $22 |
| 140 | | 5 |
| 132 CICF FEE | | 20 |
| 229 CHMF | | 2 |

OTHER (SPECIFY)

143 $1

TOTAL WITH
INTEREST CHARGE $100

A COPY DEPUTY
TESTE: \S_____ CLERK

BOOK 77 PAGE 684

**CONVICTION ORDER**

VIRGINIA: IN THE CIRCUIT COURT OF WASHINGTON

FEDERAL INFORMATION PROCESSING STANDARDS CODE: 191

Hearing Date: December 3, 1997
Judge: Nicholas E. Persin

COMMONWEALTH OF VIRGINIA

v.

PATRICK J. MANNIX, SR. DEFENDANT

ENTERED: December 3, 1997

| CASE NUMBER | OFFENSE DESCRIPTION AND INDICATOR (F/M) | OFFENSE DATE |
|---|---|---|
| 97-300 | TRESPASS | 5-23-97 |

VA. CODE SECTION
18.2-119

This day came the defendant, in person, pro se. J.D. Bolt, Special Prosecutor, appeared on behalf of the Commonwealth. The court reporter recording these proceedings was Carla R. Tinnes.

The defendant stands before this Court on the appeal from the General District Court on the charges described above.

The defendant was arraigned, and pleaded NOT GUILTY to the charge contained in the warrant herein, which plea was tendered by the accused in person.

The Court then impaneled thirteen qualified jurors, free from exception for the trial of the defendant. Whereupon the Attorney for the Commonwealth and the defendant each alternately exercised their rights to strike the names of three veniremen from the panel, as provided by law, and the remaining seven jurors, constituting the jury for the trial of the defendant, were sworn.

After opening statements, evidence was presented by the Commonwealth.

At the conclusion of the Commonwealth's evidence, the defendant moved the Court strike the evidence of the Commonwealth, on grounds stated to the record, which motion was denied.

After hearing all the evidence, the instructions of the court, argument by the Attorney for the Commonwealth and the defendant, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, in the following words:

> "We, the jury, find the defendant guilty of trespassing and fix his punishment at $1250.00, S. Paul Danko, Foreman."

Thereupon the jury was polled at the request of the defendant. The verdict was ordered received and accepted by the Court and the jury was dismissed.

The defendant moved the Court to set the verdict aside and to allow him time to file in writing his grounds in

support of his motion. The Court granted the defendant until December 14, 1997, to file said grounds.

The Court ordered that the defendant post a bond in the amount of $1750.00, with surety to be approved by the Clerk of this Court. The defendant shall post the aforesaid bond on or before December 4, 1997, at 5:00 p.m.

The defendant is allowed to depart under his present bond which shall remain in full force and effect until the new bond in the amount of $1750.00 is posted.

This matter is continued until December 18, 1997, at 9:00 a.m., at which time the Court will consider the motion to set aside the jury verdict. The Court defers sentencing in this matter until December 18, 1997.

The defendant's bond shall remain in full force and effect until final disposition of this matter.

The defendant is allowed to depart upon the conditions stated herein

ENTER this the 3rd day of December 1997.

\S_____
Judge

SENTENCING ORDER

VIRGINIA: IN THE CIRCUIT COURT OF
WASHINGTON COUNTY

FEDERAL INFORMATION PROCESSING
STANDARDS CODE: 191

Hearing: December 18, 1997
Judge: Nicholas E. Persin

COMMONWEALTH OF VIRGINIA

VS.

PATRICK J. MANNIX, SR., DEFENDANT

ENTERED: January 5, 1998

| CASE NUMBER | OFFENSE DESC. AND INDICATOR | OFFENSE DATE |
|---|---|---|
| CR97-300 | TRESPASSING (M) | May 23, 1997 |

VA CODE
SECTION
18.2-119

This day came defendant, acting as his own attorney, J. D. Bolt, Special Prosecutor appeared on behalf of the Commonwealth.

It appearing to the Court that the defendant was tried in this Court on December 3, 1997 at which time he was found guilty as charged in the appeal form the General District Court in this matter.

Upon motion of the defendant, sentencing was deferred to allow the defendant time to file a Motion to Set Aside the Verdict of the Jury.

Before pronouncing the sentence, the Court heard argument from the Defendant and the Special Prosecutor on the previously filed Motion to Set Aside the Verdict; the Defendant then made a Motion for Continuance to obtain counsel to argue this Motion to Set Aside Verdict and a motion to obtain counsel to review the Commonwealth's Response to Motion to Set Aside Verdict. All of the above Motions were denied by the Court, and the Defendant noted his objections to said denials.

The Court SENTENCES the defendant to:

A fine of $1250.00, in accordance with the verdict of the jury.

Costs. The defendant shall pay costs of $1812.00. This shall be paid within six (6) months of this date.

Upon the issuance of sanctions against the Defendant, the Court affirms the prior General District Order entered July 16, 1997 that Patrick J. Mannix, Sr. shall not issue, or cause to be issued, Summonses and or Subpoenas Duces Tecum in any future proceedings before the Washington County Circuit Court and the Washington County General District Court without having first obtained permission from a Judge of the respective Court to do the same. Also, it is sanctioned that the defendant shall pay the costs of this proceeding incurred by the issuance of Subpoenas Duces Tecums by the Defendant Kay Saul, Tonya Graham and Judy Anderson, amounting to $15.00.

The defendant noted his intention to appeal the decision of this Court. The Court sets the appeal bond in this matter at $2500.00.

ENTER: THIS 5TH DAY OF JANUARY, 1998.

\S_____

JUDGE

DEFENDANT IDENTIFICATION
Alias: None
SSN: 082-42-2691
DOB: MAY 17, 1951
SEX: M
SENTENCING SUMMARY:
$1250.00 FINE PLUS COSTS
OF THE PROCEEDING
AND SANCTIONS OF THE COURT

A COPY
TESTE: \S\ _____ DEPUTY CLERK

**VIRGINIA:**

In the Court of Appeals of Virginia on Friday the 9th day of October, 1998.

Patrick J. Mannix, Sr.,

Appellant,

against Record No. 0302-98-3
Circuit Court No. CR97-300

Commonwealth of Virginia,

Appellee.

ENTERED: October 9, 1998

From the Circuit Court of Washington County

Before Judge Coleman, Retired Judges Penn and Richardson*

For the reasons previously stated in the order entered by this Court on June 23, 1998, the petition for appeal in this case hereby is denied in part and dismissed in part.

This order shall be certified to the trial court.

---

* Retired Judges Carleton Penn and Frank I. Richardson, Jr. took part in the consideration of this case by designation pursuant to Code § 17-116.01.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: \S\ _____
Deputy Clerk

**VIRGINIA:**

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 15th day of December, 1998.

Patrick J. Mannix, Sr.,

Appellant,

against Record No. 982323
Court of Appeals No. 0302-98-3

Commonwealth of Virginia,

Appellee.

ENTERED: December 15, 1998

From the Court of Appeals of Virginia

Finding that the decision of the Court of Appeals does not involve (!) a substantial constitutional question as a determinative issue, or (2) matters of significant precedential value, the Court dismisses the petition for appeal filed in the above-styled case. Code § 17.1-410 (A) (1) and (B).

A Copy,

Teste:
David B. Beach, Clerk

By: \S\ _____
Deputy Clerk